

EXHIBIT A

Esther Sung

From: Esther Sung
Sent: Tuesday, August 8, 2023 6:17 PM
To: Ryan Walters; Fudim, Elissa P. (CIV)
Cc: Reuveni, Erez R. (CIV); Ryan, Erin T. (CIV); Ward, Brian C. (CIV); Jane Bentrott; Vanessa Rivas; Monika Langarica; Karen Tumlin
Subject: RE: CHNV Stipulation on Business Records

Hi, Ryan—thanks for the e-mail. With regards to the exhibits from our opposition to Texas’s preliminary injunction motion – our Exhibit and Witness List filing last Wednesday stated:

Pursuant to ECF 159, Amended Scheduling Order, Intervenor Defendants file their exhibit and witness list. Consistent with the Court’s order, which provides that “evidentiary materials attached to the Parties’ previous briefing, and any supplemental exhibits, affidavits, or declarations they may submit, are admitted as authentic and without need of a sponsoring witness and are presumptively admitted as ‘part of the trial record and need not be repeated at trial,’” ECF 159 at 2, Intervenor Defendants consider Federal Defendants’ Administrative Record and Intervenor and Federal Defendants’ exhibits, affidavits, and declarations submitted in support of previous briefing as included in the trial record. As such, Intervenor Defendants have not additionally included that evidence in their exhibit list below.

We do plan on relying on evidence attached to our PI briefing at trial, and this was not intended to be a surprise, especially given the language from Judge Tipton’s scheduling order. If you would like to discuss further, we can do so tomorrow at 1 pm or earlier – whatever you prefer.

Thanks,
Esther

From: Ryan Walters <Ryan.Walters@oag.texas.gov>
Sent: Tuesday, August 8, 2023 6:10 PM
To: Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>; Esther Sung <Esther.Sung@justiceactioncenter.org>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>; Ryan, Erin T. (CIV) <Erin.T.Ryan@usdoj.gov>; Ward, Brian C. (CIV) <Brian.C.Ward@usdoj.gov>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: RE: CHNV Stipulation on Business Records

Esther, we would not oppose your adding those three exhibits of CBP data to your Exhibit List. We also agree to your version for the stipulation, except for the reference to the exhibits you cite from your response to the preliminary injunction motion that were not designated on your Exhibit List, that we never had a chance to object to, and we are finding out about your intention to use them at trial the day before any motions to exclude are due.



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From: Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>
Sent: Tuesday, August 8, 2023 2:05 PM
To: Esther Sung <Esther.Sung@justiceactioncenter.org>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>; Ryan, Erin T. (CIV) <Erin.T.Ryan@usdoj.gov>; Ward, Brian C. (CIV) <Brian.C.Ward@usdoj.gov>
Subject: RE: CHNV Stipulation on Business Records

Hi Esther,

Defendants do not oppose your motion to supplement your exhibit list with those proposed exhibits. And we are also fine with your edits to the stip.

Please include Brian and Erin on future emails too if you don't mind.

Thanks.
Elissa

From: Esther Sung <Esther.Sung@justiceactioncenter.org>
Sent: Tuesday, August 8, 2023 2:43 PM
To: Ryan Walters <Ryan.Walters@oag.texas.gov>; Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>
Subject: [EXTERNAL] RE: CHNV Stipulation on Business Records

Hi, Ryan, Elissa, Erez—

Thanks for your patience as we get back to you on the proposed stip. I have two points to raise:

First, Intervenor Defendants have belatedly realized that we accidentally left three exhibits off the list we filed last week. I have attached them to this e-mail; they are more configurations of data from the publicly available CBP "Nationwide Encounters" dashboard.

Would you please let me know if you would be amenable to Intervenor Defendants filing a motion to amend our Trial Witness/Exhibit List to add these three exhibits? In addition to the three exhibits we would like to add, I am attaching for your convenience a redline of the original list that includes the three additional exhibits as Exhibit Nos. 66-68.

Second, I have added to the draft stipulation the exhibits that Intervenor Defendants would like to include, including - at the risk of being presumptuous - the three extra exhibits that we hope to add to our exhibit list.

In addition, we are proposing different language for the stip to address the challenge of having data admitted into the record without requiring a sponsoring witness to testify to the accuracy of the data. It seemed to us that eliminating objections to any data based on hearsay resolves the issue most cleanly.

Can you please let me know if the parties are amenable to Intervenor Defendants filing a motion for leave to amend our trial exhibit list? We also welcome any further comments/edits to the language of the stip.

Thanks,
Esther

From: Ryan Walters <Ryan.Walters@oag.texas.gov>
Sent: Monday, August 7, 2023 3:13 PM
To: Esther Sung <Esther.Sung@justiceactioncenter.org>; Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: RE: CHNV Stipulation on Business Records

Esther, here is a redline of what I think we are talking about.



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From: Esther Sung <Esther.Sung@justiceactioncenter.org>
Sent: Monday, August 7, 2023 2:59 PM
To: Ryan Walters <Ryan.Walters@oag.texas.gov>; Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>
Subject: RE: CHNV Stipulation on Business Records

Ryan, do you mind providing a redline to Elissa's original draft stip to show us how you envision the stip would include/cover the declarations or the data in the declarations?

I'm attaching Elissa's original language for convenience – thanks in advance for your proposed revision.

Thank you!
Esther

From: Ryan Walters <Ryan.Walters@oag.texas.gov>
Sent: Monday, August 7, 2023 10:39 AM
To: Fudim, Elissa P. (CIV) Elissa.P.Fudim@usdoj.gov; Esther Sung Esther.Sung@justiceactioncenter.org
Cc: Reuveni, Erez R. (CIV) Erez.R.Reuveni@usdoj.gov; Ryan Walters Ryan.Walters@oag.texas.gov
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That all sounds fine to us, Elissa.



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From: Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>
Sent: Monday, August 7, 2023 10:25 AM
To: Ryan Walters <Ryan.Walters@oag.texas.gov>; Esther Sung <Esther.Sung@justiceactioncenter.org>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>
Subject: RE: CHNV Stipulation on Business Records

Hi Ryan,

Yes, we would be amenable to adding into the stipulation the data in Plaintiffs' and Intervenor Defendants' declarations. But we will not stipulate that we won't seek to exclude any declarations in whole or in part. That's a separate issue that conflates relevance and hearsay. In other words, we won't seek to exclude any declaration in whole or in part based on the data being hearsay—that is what the kept and maintained in the normal course of business stipulation addresses. But we reserve our right to argue that data is irrelevant and should not be admitted into evidence on that basis. And of course that's a right that you would not waive either.

Elissa

From: Ryan Walters <Ryan.Walters@oag.texas.gov>
Sent: Monday, August 7, 2023 10:52 AM
To: Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>; Esther Sung <Esther.Sung@justiceactioncenter.org>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>; Ryan Walters <Ryan.Walters@oag.texas.gov>
Subject: [EXTERNAL] RE: CHNV Stipulation on Business Records

Elissa, we would agree to something like this. Could we include the data in Plaintiffs' four declarations along with Defendants' data and Intervenor Defendants' declaration? I am thinking we can obviate some of the motion practice if we can more broadly agree that we are not seeking to exclude any of those exhibits, from any party, but may of course argue at trial and post-trial briefing that the Court should not give them any weight for relevance or any other reason.



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From: Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>
Sent: Wednesday, August 2, 2023 1:59 PM
To: Ryan Walters <Ryan.Walters@oag.texas.gov>; Esther Sung <Esther.Sung@justiceactioncenter.org>
Cc: Reuveni, Erez R. (CIV) <Erez.R.Reuveni@usdoj.gov>
Subject: CHNV Stipulation on Business Records

Hi Ryan, Ester,

In thinking through some of the logistics, I propose the attached stipulation. Plaintiffs have listed as exhibits Defendants' interrogatory responses, including the data therein, and the data Defendants separately produced. Defendants also intend to list as exhibits the data included in the Rog responses (possibly pulled out into separate documents), the data we produced, and the updated nationality data to be produced. It seems to me, that data is admissible as data kept and maintained in the normal course of business, but we'd like to avoid having to bring in a record's custodian to provide the limited testimony necessary to lay that foundation. And since Plaintiffs also intend to rely upon that data, would you be willing to enter into the attached stipulation? (After, of course, you see our actual exhibit list, so you can see what Exhibits we are actually referring to. It is the same data you've listed in your list, but we separated it out differently.)

Thoughts?

Elissa

Elissa P. Fudim

Trial Attorney

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